IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL NO. 865 OF 1983

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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AMIRALI JAFARALI KHOJA - Appellant(s)
Versus
MOHMADBHAI USMANBHAI SHAIKH & ANR. - Respondent(s)

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Appearance :
Shri Satyen B. Rawal for Appellant(s).
None for Respondent(s) : 1.
Shri Vasant S. Shah for Respondent(s) : 2.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 24/08/2007

ORAL JUDGMENT

The appellant-Faridabanu (since deceased through her legal

representatives) has filed the present appeal, being aggrieved by the judgement and award dated 7th May, 1982 passed by the learned Motor Accident Claims Tribunal, Valsad in M.A.C.P. No.104 of 1980, dismissing the claim, is before this Court with a submission that the learned Tribunal below was unjustified in dismissing the claim.

2. In an accident between two trucks bearing Registration Nos. GTC-3113 (belonging to the appellant) and GTB-6834 (driven by one Gangaram Bhalaji Rajput), the driver of other truck bearing No. GTB-6834 suffered certain injuries and one inmate of the truck, namely, Abhesinh Pratapbhai Baria also suffered certain injuries. The said Abhesinh filed M.A.C.P. No.75 of 180, but, during pendency of the said claim petition, he died as a result of the injuries, therefore, his legal representatives were substituted on record. The driver of truck No. GTB-6834 filed M.A.C.P. No.105 of 1980 and the present appellant – Faridabanu also filed M.A.C.P. No.104 of 1980 against the owner of truck No. GTB-6834 and the Insurance Company. The case of Abhesinh was that the accident was the result of rash and negligent driving on the part of each of the drivers, while the case of Gangaram Bhalaji Rajput, the driver of truck No. GTB-6834, was that the accident was result of sole negligence on the part of the driver of truck No. GTC-3113. The claim of Smt. Faridabanu was that her truck suffered damages to the extent of Rs.60,000/- and the accident was result of rash and negligent

driving on the part of Gangaram Bhalaji Rajput.

3. The learned Tribunal below, after recording the evidence and hearing the parties, held that the driver of truck No. GTC-3113 was author of the accident, there was no negligence on the part of the driver of the truck No. GTB-6834. It allowed the claim in M.A.C.P. No.75 of 1980 and M.A.C.P. No.105 of 1980 against the owner and Insurance Company of truck No. GTC- 3113, owned by the present appellant, but, dismissed M.A.C.P. No.104 of 1980 filed by the appellant.

4. It is to be noted that the awards made in M.A.C.P. Nos.75 of 1980 and 105 of 1980 have not been challenged before any Court either by the Insurance Company or by the appellant-owner of truck No. GTC-3113. The present appeal has been filed by Smt. Faridabanu on the ground that the driver of truck No. GTB-6834 was the author of the accident and under the circumstances, the claim filed by Smt. Faridabanu could not be rejected.

5. Shri Satyen B. Rawal, learned Counsel for the appellant, submitted that the learned Tribunal below has recorded contradictory findings and erred in holding that the driver of truck No. GTC-3113 was solely responsible for the accident. According to him, the claim ought to

have been allowed *in toto*.

6. Shri Vasant S. Shah, learned Counsel for respondent No.2, however, submitted that the findings in favour of Abhesinh Baria (since deceased) and Gangaram Bhalaji Rajput recorded in M.A.C.P. Nos.75 of 1980 and 105 of 1980 have attained finality and as the same have not been challenged by way of any appeal, the same would operate as *res judicata* against the interest of the appellant.

7. From the award made by the learned Tribunal below, it would clearly appear that the learned Tribunal was of the opinion that the accident took place because of the sole negligence on the part of the driver of truck No. GTC-3113. If such was the finding and on such finding, the M.A.C.P. Nos.75 of 1980 and 105 of 1980 have been allowed against the interest of the owner (present appellant) and the Insurance Company of Truck No. GTC-3113 and if the said findings recorded in favour of other two claimants are not challenged by the present appellant, then, the present appellant would not be allowed to challenge the said findings in the present appeal.

8. Section 11 of the Code of Civil Procedure, 1908 refers to *res judicata*, clearly stating that the findings recorded by the Court of limited

jurisdiction would be binding upon the parties in the subsequent proceedings. Interpreting Section 11 of the Code, different Courts have held that the order passed at an earlier stage would also amount to *res judicata* in the same matter at a later stage. Assuming for a minute that Section 11 of the Code does not apply in its word and spirit, then too, it would be trite to say that the principles underlying Section 11 of the Code would apply to avoid multiplicity of proceedings, to bring an end to the litigation, to avoid contradictory findings and judgements and to maintain judicial discipline.

9. If the appellant is allowed to challenge the findings recorded against her interest in M.A.C.P. No. 104 of 1980, then, the possibility of contradictory judgements cannot be avoided. If this Court holds that Smt. Faridabanu is entitled to some damages in the form of compensation from the owner and the Insurance Company of truck No. GTB-6834, then, the findings would run contrary to the findings, which have attained finality, holding that the driver of truck No. GTC-3113 was solely responsible to occasion the accident. To avoid such eventuality, the principles underlying Section 11 of the Code will have to be observed.

10. As the appellant-Smt. Faridabanu has not challenged the

awards delivered in favour of Abhesinh Baria and Gangaram Rajput and has allowed the findings to become final, she cannot be allowed to challenge the findings in this appeal.

11. In the opinion of this Court, the appeal cannot be maintained. It deserves to and is, accordingly, dismissed. No costs.

[R.S.Garg, J.]

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